

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANTHONY CARTER, SR.,)	
)	
Plaintiff)	
)	Civil Action No. 05-311-KAJ
vs.)	
)	Honorable Kent A. Jordan
MARMON KEYSTONE,)	
)	
Defendant.)	

REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT

Pro se Plaintiff, Anthony Carter, Sr., initiated this action on May 19, 2005. On November 22, 2005, Defendant, Marmon/Keystone Corporation ("Marmon Keystone"), by its attorneys, Snyder & Associates, P.A., and Cohen & Grigsby, P.C., filed a Motion to Dismiss Complaint ("Motion to Dismiss") pursuant to Federal Rules of Civil Procedure 12(b)(4) and (5) because, in contravention of Rules 4(m) and 4(d)(2)(C), Plaintiff failed to: (i) serve his Complaint within 120 days of filing; and (ii) include a copy of his Complaint with his request for waiver of service of summons.

Plaintiff filed an opposition to Marmon Keystone's Motion to Dismiss on November 28, 2005, captioned "Motion of Right of Appeal" ("Plaintiff's Opposition"). Plaintiff's Opposition contends that he "was not aware that another copy of the complaint should have accompanied the request for waiver." In addition, Plaintiff purports to cure his defective service by attaching a copy of his "complaint." Plaintiff's Opposition, however, includes a copy of the Charge of Discrimination he filed with the Delaware Department of Labor and the Equal Employment Opportunity Commission -- *not* the Complaint he filed with this Court. Therefore, Plaintiff does not dispute that he failed to serve his Complaint within 120 days of filing. Nor does Plaintiff contend that he included a copy of his Complaint with his request for waiver of service of summons. Accordingly,

as set forth in Marmon Keystone's Motion to Dismiss, Plaintiff's Complaint should be dismissed in its entirety.

Respectfully submitted,

SNYDER & ASSOCIATES, P.A.

s/ Bayard J. Snyder
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Bar # 175
Attorney for Marmon/Keystone Corporation

DATED: December 5, 2005

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing Reply in Support of Motion to Dismiss Complaint was served on December 5, 2005, via first-class mail, postage prepaid, upon the following:

Anthony Carter, Sr.
28 Monticelo Blvd.
New Castle, Delaware 19720

s/ Bayard J. Snyder
BAYARD J. SNYDER, ESQUIRE